

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**SCOTT M. CRAWFORD, DEWONE)
BANKS, JASON BUNCH,)
GWEDOLYN BYRD, LEE COLE, JAN)
HAWTHORNE, IRENE MYERS,)
BONNIE THOMPSON, MELVINA)
TOBIAS, EDDIE TURNER, JERRI)
WALTON, MISSISSIPPI COALITION)
FOR CITIZENS WITH DISABILITIES,)
MISSISSIPPI COUNCIL FOR THE)
BLIND JACKSON CHAPTER,)
ON BEHALF OF THEMSELVES AND)
ALL OTHERS SIMILARLY)
SITUATED,)**

Plaintiffs

vs.

**CITY OF JACKSON AND CITY OF)
JACKSON PUBLIC)
TRANSPORTATION SYSTEM)
("JATRA"),)**

Defendants

CASE NO. 3:08 cv586 TSL-JCS

PLAINTIFFS' MOTION TO EXTEND TIME TO DESIGNATE EXPERT

The plaintiffs hereby respectfully move this Court to extend the time to designate an expert. As grounds, the parties state as follows:

1. The parties filed a Joint Motion to Extend Deadlines and Amend the Case Management Order on June 1, 2009.
2. On June 4, 2009 the Court granted the motion in part and ordered the Plaintiffs' expert to be designated by July 24, 2009. Many events affecting the pace and nature of the case have taken place since then making an extension just and

necessary.

3. The City defendants had interim political leadership for the entire month of June, with Mayor-elect Johnson unable to take office until on or about July 1, 2009. As a result, settlement negotiations did not continue despite the parties' joint motion being partially based upon the belief that the Settlement Proposal submitted to the City would be considered and progress toward settlement would continue.
4. On June 10, 2009, counsel for the plaintiffs contacted the City Attorney regarding the status of the Proposed Settlement Agreement and requesting additional negotiations. See Ex. 1. The City Attorney's office did not respond in writing and the parties agreed that negotiating with the interim political head would be unproductive. The plaintiffs also served Requests for Documents and their First Set of Interrogatories on counsel for defendants on June 10, 2009. Ex. 2 (Request for Documents); Ex. 3 (Interrogatories).¹
5. To date, the defendants have not served any discovery responses and have requested that plaintiffs agree to a 30-day extension to their answers due July 10, 2009. The first time this extension was requested was July 9, 2009. See Ex. 4.² The plaintiffs did not agree to the extension because the defendants would not commit in writing to their agreement to allow the United States to join the case

¹ The plaintiffs also noticed a deposition on that date and two more approximately two weeks later. Two depositions of employees of the defendants have been taken.

² This is not a Motion to Compel, the Plaintiffs still wish to work with the parties to develop discovery and settlement plans that take into account the entry to the United States into the case yesterday. However, one will be forthcoming if discovery is not provided as the plaintiffs have the pending motion for class certification and recognize that some discovery regarding class allegations is necessary if the pending motion is to be replaced. See *Stewart v. Winter*, 669 F.2d 328, 331 (5th Cir. 1982)(noting that prior Fifth Circuit decisions make it clear "that in most cases 'a certain amount of discovery is essential in order to determine the class action issue and the proper scope of a class action.' (citing) *Pittman v. E. I. duPont de Nemours & Co.*, 552 F.2d 149, 150 (5th Cir. 1977)).

and to join in a proposed extension of all discovery deadlines. It took the City until Friday, July 17, 2009 to confirm that they would not oppose the intervention of the United States, which came in the form of their filing.

6. Beginning the first week in July, the plaintiffs began requesting access to the buses and bus depots for their expert in order for the development of his report. That, coupled with their discovery responses due on July 10, 2009, would have allowed him adequate time and information to prepare a thorough report. This request was followed up on no less than three times in writing and the City refuses to grant access or even respond. See Ex. 5 (July 7, 2009 letter re-requesting access for expert); Ex. 6 (July 13, 2009 E-mail from Bowie to Hawkins stating that City still had not “responded to the request” for expert access); Ex. 7 (July 17, 2009 E-mail exchange between Bowie and Hawkins regarding discovery and reiterating the fact that the City never responded to the “request for access” for the expert)..
7. Without the requested discovery or requested access, the expert was unable to prepare a report.
8. The parties have discussed the possibility of requesting a new Case Management Order if the United States joined the case, however because the United States joined the case so recently no agreement between the parties has been reached.
9. Settlement negotiation have ceased although the plaintiffs requested that it be continued and/or that discovery be conducted in their June 10, 2009 letter to the City Attorney. Ex. 1. With the entry of the United States into the case, the parties may recommence negotiations with new recommendations and proposals, and has

been contemplated for months, settle this litigation. If not, the plaintiffs respectfully request the opportunity to continue discovery by receiving a short extension of time to either receive cooperation from the defendants or file a Motion to Compel with this Court.

10. As a result of the foregoing, the plaintiffs respectfully request:

- i. that the 7/24/2009 deadline for Plaintiffs' Expert Designation imposed by the Court's June 4, 2009 Order be extended to September 10, 2009.
- ii. that this Court grant any other relief it deems just and reasonable.

DATED this the 24th day of July, 2009.

Respectfully submitted,

By:

/s/ Courtney A. Bowie

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CERTIFICATE OF SERVICE

I, Courtney A. Bowie, hereby certify that I electronically filed a true and accurate copy of the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to counsel for the defense and the United States on July 24, 2009.